



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/682,459

10/08/2003

Richard S. Ginn

16497.3.1

1645

57360

7590

04/02/2008

WORKMAN NYDEGGER
1000 EAGLE GATE TOWER,
60 EAST SOUTH TEMPLE
SALT LAKE CITY, UT 84111

EXAMINER

DORNBUSCH, DIANNE

ART UNIT

PAPER NUMBER

3773

MAIL DATE

DELIVERY MODE

04/02/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/682,459	Applicant(s) GINN ET AL.	
	Examiner DIANNE DORNBUSCH	Art Unit 3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,9 and 10 is/are rejected.
- 7) ☐ Claim(s) 2-8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/09/2007, 10/30/2007, 1/28/2008</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 1 recites the limitation "the distal end" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Janzen (5,437,631).

Janzen discloses the following claimed limitations:

Claim 1: A method for delivering a closure element (48) to seal an opening through tissue, the closure element (48) being carried on a proximal end of an elongate member (32) such that a proximal end of the closure element (48) is spaced apart from an outer surface of the elongate member (the closure element is slide onto the elongated member starting at the proximal end where a portion will be spaced apart from the outer

surface of the elongated member), the method comprising: inserting the distal end of the elongate member (32) into an opening through tissue (Fig. 2); inserting a distal end of an actuator member (45 which is formed by components 43a and 43b) between the proximal end of the closure element (48) and the outer surface of the elongate member (32) until the distal end of the actuator member is coupled with the closure element (Fig. 4-5 and Col. 5 Lines 40-42); advancing the actuator member (45) distally, thereby advancing the closure element (48) towards the distal end of the elongate member (32) (Fig. 5-6); engaging tissue adjacent the distal end of the elongate member (32) with tissue engaging elements (the closure element is a sealant which contains hemostatic material in the form of fibrous collagen (used as a sealant) that activates the clotting action in order to close the tissue, hence the engaging elements are the parts of the material which interact with the blood to cause the clotting action) on the closure element (48); and withdrawing the elongate member (32) from the opening, thereby leaving the closure element (48) to close the opening (Col. 5 Lines 44-53).

Claim 9: That the opening through tissue communicates with a blood vessel (20), and wherein leaving the closure element to close the opening comprises leaving the closure element to substantially seal the opening from blood flow therethrough with the closure element (Fig. 6 and Col. 5 Lines 40-55).

Claim 10: That the elongate member (32) comprises a lumen extending between the proximal and distal ends (Fig. 3-5), and wherein the method further comprises inserting one or more instruments through the lumen into the blood vessel (Fig. 2 and Col. 5 Lines 26-30).

Allowable Subject Matter

6. Claims 2-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Regarding claims 1-10 which were indicated as being allowable on the office action mailed on April 18, 2007; regrettably the allowance has been withdrawn by the examiner due to a newly found prior art reference.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIANNE DORNBUSCH whose telephone number is (571)270-3515. The examiner can normally be reached on Monday through Thursday 7:30 am to 5:00 pm Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. D./
Examiner, Art Unit 3773

/Darwin P. Erezol/
Primary Examiner, Art Unit 3773